

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 8, 2011

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 10KD-141

KAUAI

After-the-Fact Issuance of Direct Lease to Honpa Hongwanji Mission of Hawaii for Church Parking and Allied Purposes; Issuance of a Management Right-of-Entry, Kapaa, Kawaihau, Kauai, Tax Map Key: (4) 4-5-06: 08.

APPLICANT:

Honpa Hongwanji Mission of Hawaii (HHMH), a Hawaii non-profit corporation.

LEGAL REFERENCE:

Section 171-43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government (Crown) lands of Kapaa situated at Kapaa, Kawaihau, Kauai identified by Tax Map Key: (4) 4-5-06: 08, as shown on the attached map labeled Exhibit A.

AREA:

0.570 acres or 24,820 square feet, more or less.

ZONING:

State Land Use District: Urban
County of Kauai CZO: R-4/ ST-P

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Unencumbered.

Previously encumbered by General Lease No. S-5492 to HHMH, for church parking and allied purposes. Term expired on January 31, 2011.

CHARACTER OF USE:

Church Parking and Allied purposes.

LEASE TERM:

Thirty (30) years

COMMENCEMENT DATE:

February 1, 2011

ANNUAL RENT:

\$480.00 per annum (Minimum Rent Policy for New Dispositions, May 13, 2005)

Pursuant to HRS 171-43.1, and the minimum rent policy established by the Board at its meeting of May 13, 2005, under agenda item D-19, minimum rent policy for new dispositions to non-profits.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 10th and 20th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

PROPERTY CHARACTERISTICS:

Utilities –	All available
Slope –	Approximately level
Elevation -	Approximately 9-feet, more or less
SCS Soil Service-	Consists of Mokuleia fine sand loam

Legal access to property – Legal access to the property is off of Kaloloku Road.
Subdivision – Subject property is a legally subdivided lot.
Encumbrances – Although General Lease No. S-5492 to HHMH expired on 1/31/11,
Lessee still requires use of the subject property till a new lease is issued.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exemption Notification attached below as Exhibit C.

DCCA VERIFICATION:

Place of business registration confirmed: YES
Registered business name confirmed: YES
Applicant in good standing confirmed: YES

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for the costs of public notice pursuant to section 171-16.

REMARKS:

At its meeting of June 9, 1972, Agenda Item F-29, the Board of Land and Natural Resources approved a partial withdrawal from Executive Order No. 1151 (Waipoli Park) for a direct lease to HHMH.

At its meeting of June 9, 1972, Agenda Item F-30, the Land Board approved the issuance of a direct 65-year lease (GLS-4409) over lands withdrawn from Waipoli Park, to HHMH for church parking and allied purposes.

At its meeting of August 12, 1977 (Item F-31), the Land Board approved the Acceptance of Voluntary Surrender of General Lease No. S-4409, a 65-year direct lease to HHMH.

At its meeting of January 28, 1978, the Land Board approved issuance of Executive Order No. 2914 for placing the lands previously under lease to the HHMH together with an adjoining State parcel under the management and jurisdiction of the Department of Transportation (DOT) for boat launching facilities.

By letter dated July 17, 1978, the DOT notified DLNR Land Division that it received a letter from the HHMH requesting to again lease the above mentioned State land.

At its meeting of August 11, 1978, Item F-30, the Land Board approved the withdrawal of lands from E.O. 2914 with subsequent issuance of a direct 55-year lease (GLS-4674) covering the same area to the HHMH for church parking and allied purposes. Lease

commenced on 2/1/81 and was scheduled to expire on 1/31/96.

At its meeting of February 23, 1979, Item F-11, the Board approved to amend its previous Board Action of August 11, 1978 (F-30), to decrease the lease term of General Lease No. S-4674 to fifteen (15) years and to change the use to parking.

By letter dated July 31, 1990, Don K. Kitaoka, Attorney, on behalf of the HHMH, requested to amend General Lease No. S-4674 to extend the lease term back to 55-years and to allow development of a two-story educational building. The proposed building would consist of classrooms, bathrooms facilities, meeting rooms, day care/nursery school facilities and associated facilities.

At its meeting of July 26, 1991, Item F-21, the Land Board approved HHMH's request to cancel General Lease No. S-4674 and to issue a new 55-year direct lease for Multi-Purpose Youth Educational Use and Parking.

At its meeting of March 13, 1992, Item F-5, the Land Board approved HHMH's request to rescind its prior Board action of July 26, 1991 (F-21) to cancel General Lease No. S-4674 and to reissue a new direct 55-year lease. Due to a difference in opinion within the church's membership, the divided congregation had decided to forgo its plans to build a youth educational facility and would like General Lease No. S-4674 reinstated as originally proposed.

At its meeting of October 14, 1994, under Agenda Item F-15, the Board of Land and Natural Resources declared its intent to dispose of a direct lease encumbered under General Lease No. S-4674 to the HHMH.

At its meeting of March 24, 1995, under Agenda Item F-11, the Land Board approved the issuance of a direct lease to HHMH for church parking and allied purposes. General Lease No. S-5492, a fifteen (15) year lease commenced on February 1, 1996 and at the time, was scheduled to expire on January 31, 2011.

By letter dated May 26, 2010, Clyde Takekuma, President of HHMH requested a term extension of General Lease No. S-5492. Staff reviewed the file, then notified Mr. Takekuma that HHMH should instead apply for a new 30-year direct lease for the HHMH, as the current lease is at fair market value, but that applicant now qualifies for nominal rent as a non-profit. In January 1948, the Internal Revenue Service issued a determination letter that recognized the HHMH as exempt from federal income tax under section 501 (c)(3) of the Internal Revenue Code. (Exhibit B)

By statute and current Board policy, the Board is authorized to lease State lands to qualifying eleemosynary (charitable) organizations at nominal rent. The authority is as follows:

§171-43.1 Lease to eleemosynary organizations. The board may lease, at a

nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purpose for which their charter was issued and for which they were certified by the Internal Revenue Service. [L 1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c 202, §1; am L 1991, c 212, §3]

A section 501(c)(1) organization must be both organized by an Act of Congress and be an instrumentality of the United States, while section 501(c)(3) organization is a privately organized charitable organization.

When considering lease dispositions to, or rental reopening for, eleemosynary organizations, the Board may therefore set the rent by direct negotiation at an amount below fair market rental (i.e., nominal rent). On May 13, 2005, the Land Board established a Minimum Rent Policy that stated, among other things, that the minimum rent for a lease to a charitable organization be no less than \$480 per year. Staff believes "nominal rent" under Section 171-43.1, Hawaii Revised Statutes ought to be anywhere between fair market rent and the minimum rent of \$480 per year. In order to have a standard nominal rent for qualifying non-profit tenants, staff generally recommends rent be set at \$480 per year.

HHMH is situated at the corner of Kuhio Highway and Kaloloku Road in Kapaa. Fronting the church on Kuhio Highway there is a bus stop, therefore, no parking is allowed and parking is also prohibited along Kaloloku Road. The subject State parcel provides the only parking in the area for its membership for church services and functions.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

The proposed use has continued since February 1981. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. Staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing. As a result, it is presumed that this request is exempt from requirements under Chapter 343, HRS.

Various governmental agencies and interest groups were solicited for comments. All respondents did not have any objections to the request.

AGENCIES	COMMENTS
State of Hawaii:	

DLNR-Historic Preservation	See comments below
DLNR-OCCL	No comments
Dept of Health	No response
DOT-Highways Division	No objections
County of Kauai:	
Public Works	No comments
Other Agencies/ Interest Groups:	
Office of Hawaiian Affairs	No objections

The Division of Historic Preservation had no objections, but provided the following comments. Records indicate that there are no known historic sites within the proposed lease property. However, according to Foote et. al. (1972) the geological substrate that underlies this lot is Mokuleia fine sand loam (Mr) which has a probability of retaining archaeological deposits and potentially human burials. Because there is no proposed ground altering activity associated with this lease, we believe that this lease will have no effect on historic properties. However, we would appreciate the opportunity to review any subsequent ground altering activity if any is proposed for this site.


Staff is requesting a management right-of-entry to allow HHMH to continue using the State property while staff works on getting the lease executed. Additionally, staff is recommending a monthly fee of \$40. The payments will be later applied to the new lease which commencement date will be: February 1, 2011. This will eliminate any unnecessary surprises. Normally at the start of new lease, 6 months rent payment is required.

RECOMMENDATION: That the Board:

1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to Honpa Hongwanji Mission of Hawaii (HHMH), a Hawaii non-profit corporation covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current direct (non-profit) lease document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Grant an Immediate Right-of-Entry to the HHMH under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:

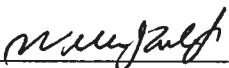
- A. The standard terms and conditions of the most current right-of-entry form as may be amended from time to time;
 - B. This right-of-entry is effective upon Land Board approval and shall continue until the direct lease document is executed;
 - C. HHMH shall remit a monthly fee of \$40.00 per month for the right-of-entry permit; and
 - D. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force.
3. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

Respectfully Submitted,



for Wesley T. Matsunaga
Acting District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



April 8, 2011

Internal Revenue Service
District Director

Date: OCT 28 1997

Honpa Hongwanji Mission Of Hawaii
1727 Pali Hwy
Honolulu, HI 96813-1612

Department of the Treasury

P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

D Downing

Telephone Number:

513-241-5199

Fax Number:

513-684-5936

Federal Identification Number:

99- [REDACTED]

Dear Sir or Madam:

This is in response to your request for a letter affirming your organization's current exempt status.

In January 1948 we issued a determination letter that recognized your organization as exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. That letter is still in effect.

Based on the information submitted, we recognized the subordinates named on the list your organization supplied as exempt from federal income tax under section 501(c)(3) of the Code. Also, we classified those subordinates as organizations that are not private foundations because they are organizations of the type described in sections 509(a)(1) and 170(b)(1)(A)(i) of the Code.

Donors may deduct contributions to your organization's subordinates as provided in section 170 of the Code. Bequests, legacies, devises, transfers or gifts to the subordinates or for their use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

Your organization and its subordinates are not required to file federal income tax returns unless subject to the tax on unrelated business income under section 511 of the Code. If subject to this tax, the organization must file an income tax return on Form 990-T, Exempt Organization Business Income Tax Return. In this letter, we are not determining whether any of your organization or its subordinates' present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

Unless specifically excepted, your organization and its subordinates are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of \$100 or more paid each employee during a calendar year. This does not apply, however, if your organization makes or has made a timely election under section 3121(w) of the Code to be exempt from such tax. Your organization and its subordinates are not liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

EXHIBIT B

Honpa Hongwanji Mission Of Hawaii
99- [REDACTED]

Each year, at least 90 days before the end of your organization's annual accounting period, please compile and forward the following information:

1. A statement describing any changes during the year in the purposes, character, or method of operation of your organization's subordinates;
2. A list showing the names, mailing addresses (including Postal ZIP Codes), actual addresses if different, and employer identification numbers of subordinates that:
 - a. Changed names or addresses;
 - b. Were deleted from the roster; or
 - c. Were added to the roster.
3. For those subordinates added, attach:
 - a. A statement that the information on which your organization's present group exemption letter is based applies to the new subordinates;
 - b. A statement that each has given your organization written authorization to add its name to the roster;
 - c. A list of those to which the Service previously issued exemption rulings or determination letters;
 - d. A statement that none of the subordinates is a private foundation as defined in section 509(a) of the Code if the group exemption letter covers organizations described in section 501(c)(3);
 - e. The street address of subordinates where the mailing address is a P.O. Box.
4. If applicable, a statement that your organization's group exemption roster did not change since the previous report.

The above information should be sent to the following address:

Internal Revenue Service Center
Attn: Entity Control Unit
Cincinnati, OH 45999

Your organization's Group Exemption Number is

Sincerely,

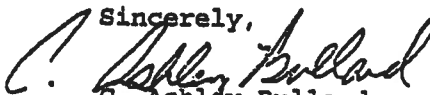

C. Ashley Bullard
District Director

EXHIBIT B

April 8, 2011



Department of the Treasury
Internal Revenue Service

FRESNO, CA 93888

In reply refer to: 8961500244
Feb. 27, 1998 LTR 86C N
99- 000000 00 000
00589

HONPA HONGWANJI MISSION OF HAWAII
1727 PALI HWY
HONOLULU HI 96813-1612274

Taxpayer Identification Number: 99-
Tax Period(s): Dec. 31, 1997

Dear Taxpayer:

Thank you for the inquiry of Jan. 13, 1998.

We're sending your correspondence, dated Jan. 13, 1998, to the Ogden Service Center at the address at the end of this letter for the following reason(s):

That is the office that handles tax exempt organization matters.

If you have any questions about this letter, please write to us at the address shown at the top of the first page of this letter. If you prefer, you may call the IRS telephone number listed in your local directory. An employee there may be able to help you, but the office at the address shown on this letter is most familiar with your case.

Whenever you write, please include this letter and, in the spaces below, give us your telephone number with the hours we can reach you. Keep a copy of this letter for your records.

Telephone Number (808) 522-9200

Hours 8:00 a.m. - 5:00 p.m.
Monday thru Saturday

EXHIBIT B

April 8, 2011



Department of the Treasury
Internal Revenue Service

8961500244
Feb. 27, 1998 LTR 86C N
99- 000000 00 000
00590

HONPA HONGWANJI MISSION OF HAWAII
1727 PALI HWY
HONOLULU HI 96813-1612274

We apologize for any inconvenience, and thank you for your cooperation.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Derome Bratvold".

Derome Bratvold
Chief, Adjustments Branch

To: Internal Revenue Service
1160 W. 1200 SOUTH STREET
OGDEN UT 84201

EXHIBIT B

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

March 24, 2011

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title:	Direct Lease to Honpa Hongwanji Mission of Hawaii
Project / Reference No.:	10HD-141
Project Location:	Kapaa, Kawaihau, Kauai, TMK: (4) 4-5-06:08.
Project Description:	Direct lease to Honpa Hongwanji Mission of Hawaii for church parking and allied purposes.
Chap. 343 Trigger(s):	Use of State Lands.
Exemption Class No. and Description:	<p>In accordance with Hawaii Administrative Rules, Section 11-200-8(A), the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to:</p> <p>Exemption Class No. 1, which states, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."</p>
Exemption Item Description from Agency Exemption List:	Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing.


EXHIBIT C

Consulted Parties:


In issuing the prior leases to the Honpa Hongwanji Mission of Hawaii over the same property, the State Historic Preservation and County Public Works were consulted. Both agencies had no objections to the request.

Recommendation:

The direct lease to the Honpa Hongwanji Mission of Hawaii will probably have minimal or no significant effect on the environment. It is recommended that the Board of Land and Natural Resources find that the proposed action is exempt from the preparation of an environmental assessment.



William J. Aila, Jr., Chairperson



Date

EXHIBIT C